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mentation plan a local regulation (Rule 203(g)(1)(A)) essentially banning all use of coal for residential and commercial space heating purposes in the Chicago metropolitan area.[1]

Respondent Roth Adam Fuel Company moved to dismiss the federal suit on grounds, *inter alia*, that the district court was without jurisdiction under 28 U.S.C. 1331 and 1337, and that it was, in any event, precluded by the federal anti-injunction statute (28 U.S.C. 2283) from enjoining the state court proceedings. Following a hearing, the district court determined that it had concurrent jurisdiction over the matter with the Circuit Court of Cook County; the federal court stayed its hand, however, pending further notice (Pet. App. 3). The court of appeals, "[t]reating the order appealed from as a denial of an injunction" (Pet. App. 7), affirmed. It concluded that the bar in the federal anti-injunction statute against federal court injunctions of state court proceedings applies in the circumstances presented, and it therefore remanded the case to the district court with instructions to dismiss.[2]

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[1] On April 27, 1972, the Illinois Circuit Court of Cook County entered a preliminary injunction against the Illinois Pollution Control Board, prohibiting it from adopting Rule 203(g)(1)(A) unless it contained a provision to compensate businesses which would be injured by adoption of the Rule. That ruling is presently pending on interlocutory appeal to the Illinois Appellate Court (Pet. App. 3–4).

[2] Because the court of appeals disposed of the case under the federal anti-injunction statute, it deemed it unnecessary to reach the other arguments relating to the district court's jurisdiction (Pet. App. 7).

2. The decision below is, in our view, correct and does not warrant further review by this Court. The state court proceedings involved here do not jeopardize "a superior federal interest" (Pet. 12), as petitioner contends. Nor is there anything in the Clean Air Act authorizing issuance of a federal injunction in these circumstances. Accordingly, dismissal of the suit is proper.

A. Petitioner's argument rests in part on a limited judicial exception to the federal anti-injunction statute, which recognizes that the United States may obtain an injunction against state court proceedings when it can show that the state proceedings, if not stayed, will have a direct adverse effect on federal interests. See *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220, 225-226; *National Labor Relations Board* v. *Nash-Finch Co.*, 404 U.S. 138, 144–147; *United States* v. *Barrett*, 442 F.2d 642, 645–646 (C.A. 4). In our view, however, even assuming *arguendo* that the "superior federal interest" argument is available to private litigants—a point on which the parties divide sharply (compare Pet. 12–13 with Opp. 5–6)[3]—the proceedings in the Illinois courts present no real threat to a federal project or policy.

[3] It is clear that the Clean Air Act does not itself provide for a private suit of this nature. As pointed out by the court below (Pet. App. 6), the federal statute contemplates "citizen participation" only "by way of public hearings on implementation plans (42 U.S.C. §§ 1857c–5(a)(1), 1857c–5(c)) and by way of suit to enforce substantive emission standards or limitations (42 U.S.C. § 1857h–2) * * *."

Petitioner's concern is apparently that the state litigation will unduly delay submission of a satisfactory Illinois implementation program to the Administrator of the Environmental Protection Agency (EPA), as contemplated by the Clean Air Act (42 U.S.C. 1857c–5), and thus will interfere with the federal "statutory scheme" (Pet. 12), which is designed promptly to improve the quality of air throughout the Nation. A brief look at that "statutory scheme," however, reveals that the state proceedings will have little impact on the federal program.

The Clean Air Act requires the EPA Administrator to promulgate national air quality standards necessary to protect the public health and welfare.[4] Such standards were adopted on April 30, 1971, 36 Fed. Reg. 8186, 42 C.F.R. 410.[5] Within nine months there-

[4] Section 109(a)(1) of the Act (42 U.S.C. 1857c-4(a)(1)) provides that, within 30 days of enactment, the Administrator "shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant" for which he had previously published air quality criteria. National primary ambient air quality standards are those standards "the attainment and maintenance of which in the judgment of the Administrator * * * are requisite to protect the public health" (42 U.S.C. 1857c-4(b)(1)). A national secondary ambient air quality standard is "a level of air quality the attainment and maintenance of which in the judgment of the Administrator * * * is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [each] air pollutant [for which criteria have been established] in the ambient air" (42 U.S.C. 1857c-4(b)(2)).

[5] On August 14, 1971, the Administrator adopted Requirements for Preparation, Adoption, and Submittal of Implementation Plans. 36 Fed. Reg. 15486; 42 C.F.R. 420. Both regu-

after, or by January 31, 1972, each State was to submit a plan to the Administrator providing for "implementation, maintenance, and enforcement of" the federal air quality standards. 42 U.S.C. 1857c-5(a)(1). These state plans were to be approved or disapproved by the Administrator within four months after submission. 42 U.S.C. 1857c-5(a)(2).* The Act specifically provides that if a plan, or any portion thereof, is disapproved, the Administrator is required to prepare federal regulations setting forth a complete or, where appropriate, a partial implementation plan for the State. 42 U.S.C. 1857c-5(c)(2).

The State of Illinois submitted its implementation plan to the Administrator on January 30, 1972. Thereafter, on April 13, 1972, the State Pollution Control Board adopted various regulations relevant to the

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lations were promulgated on November 25, 1971, so as to appear in the same place in the Code of Federal Regulations. 40 C.F.R. 50, 51.

*Section 110(a)(2) of the Act (42 U.S.C. 1857c-5(a)(2)) specifically provides that the Administrator "shall approve" a state plan if "it was adopted after reasonable notice and hearing" and meets eight specified criteria. Each plan must contain: (1) provision for the attainment of primary standards "as expeditiously as practicable" and for the attainment of secondary standards within a specified "reasonable time"; (2) emission limitations and timetables necessary to insure attainment and maintenance of the primary and secondary standards; (3) provisions for establishment and operation of devices and techniques to monitor and analyze air quality; (4) procedures for review of the location of new sources; (5) provisions for intergovernmental cooperation; (6) provisions for adequate state support, private compliance, and reporting; (7) motor vehicle compliance inspection requirements; and (8) provisions for revision.

state plan and sent them to the federal agency. With respect to Rule 203(g)(1)(A), which is due to become effective May 30, 1975, subject to the state court proceedings challenged here, the Board added the proviso—consistent with the state court restraining order (see n. 1, *supra*)—that the Rule "should not be considered to ban the use of coal for space heating in residential and commercial buildings in the Chicago Major Metropolitan Area" (Pet. App. 3).

On May 31, 1972, the Administrator disapproved a portion of the proposed Illinois implementation plan, in part because it failed to provide for sufficient control of particulate emissions from residential and solid fuel combustion sources in the Chicago area. After waiting 60 days for the State to revise its plan to include pollutant controls in this area (see 42 U.S.C. 1857c-5(c)(3)), the Administrator, on July 27, 1972, proposed a federal regulation pursuant to Section 110(c) of the Act, 42 U.S.C. 1857c-5(c), regulating the ash content of solid fuels which may be sold or used in and around the City of Chicago.[1] Hearings on the proposed regulation were held on August 31, 1972.

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[1] The proposed regulation, 37 Fed. Reg. 15100, provides in relevant part:

> • • • (1) On and after the dates prescribed herein, no person shall offer for sale, sell, or purchase for use in any residential or commercial building which is located in Chicago, Ill., nor shall any person cause the use of, or use in any residential or commercial building which is

Thus, the state court proceedings in Illinois do not, as petitioner suggests, seriously jeopardize the federal clean air program. Congress clearly contemplated that many States would, for various reasons, be unable to submit to the EPA Administrator completely satisfactory implementation plans. It therefore devised a "statutory scheme" calling for a coordinated effort on the part of the federal government and the States to achieve national air quality standards. Where, as in this case, the State implemention plan is in some respects deficient, and the State is unwilling or unable to make the revisions necessary to conform the plan to national standards, the Clean Air Act explicitly provides for the promulgation of federal regulations to remedy the deficiency. Whatever might be the minimal delay that is caused by invoking this procedure—a delay that might have been avoided had the state court not been permitted to enjoin the adoption of Rule 203(g)(1)(A)—it is a delay which Congress fully anticipated and took into account in drafting the federal legislation.

Accordingly, we agree with the court of appeals that "the scheme of the Federal Clean Air Act has

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located in Chicago, Ill., any solid fuel which contains ash in excess of the following limits:

Maximum ash content (*percent, by weight*)	*Compliance date*
8.0	December 31, 1973
2.0	July 31, 1975

not been thwarted by the state court suit" (Pet. App. 7). Notwithstanding the state proceedings, a suitable implementation plan for the State of Illinois is being devised well within the general time-frame contemplated for accomplishing the objectives of the federal clean air program. Nor is the development of that plan without state participation. The contested state litigation deals with but one aspect of the plan submitted by the Illinois Pollution Control Board; in all other respects the State is integrally involved in implementing a program for Illinois that will enable that State to achieve the national air quality standards. And, even insofar as the ultimate plan concerns control of the particulate emissions involved here, the State still may have an opportunity to participate if the preliminary injunction entered by the Circuit Court of Cook County is reversed on appeal in the state courts. For the Clean Air Act provides that, even after the EPA Administrator has promulgated a regulation in this area, that portion of the implementation plan may be revised by the State if the revision satisfies all other statutory criteria. 42 U.S.C. 1857c-5(a)(3).

We therefore do not believe that either the policy or the underlying purpose of the Clean Air Act is adversely affected by the pending litigation in the Illinois courts. Petitioner's argument to the contrary, to avoid the anti-injunction prohibition in 28 U.S.C. 2283, fails to appreciate the "statutory scheme" on which it is based, and was properly rejected by the court below.

3. The court of appeals also correctly rejected petitioner's alternative contention that the Clean Air

Act "expressly authorized" the granting of an injunction in these circumstances and thus removed the bar of the anti-injunction statute. As this Court stated in *Mitchum* v. *Foster,* 407 U.S. 225, 238, the applicability of the "expressly authorized" exception in 28 U.S.C. 2283 turns on "whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could be given its intended scope only by the stay of the state court proceeding."

In the present context, there is, as we have indicated, no need for such a stay to carry out the objectives of the Clean Air Act as Congress intended. Congress has delegated to the EPA Administrator the responsibility in the first instance of reviewing, and, where appropriate, revising, state implementation plans that will achieve clean air standards. Federal judicial intervention is, by the terms of the Act (42 U.S.C. 1857c-5(f)(2)(B)), confined to appellate court review of the Administrator's decision to approve or disapprove the state plan, if suit is filed within 30 days of the contested decision. Nowhere does the statute suggest earlier consideration by the federal courts of implementation plans proposed by the various States. Accordingly, we agree with the court below (Pet. App. 5) that the injunctive relief sought by petitioner in this case finds no "express" authorization in the Clean Air Act "within even the most attenuated meaning of the term" (*Amalgamated Clothing Workers* v. *Richman Brothers Co.,* 348 U.S. 511, 516).

For the foregoing reasons, it is the view of the United States that the petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1972.

U.S. GOVERNMENT PRINTING OFFICE: 1972